IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.508 OF 2003

In the matter of Section 439 of the Companies Act 1956;

And

In the matter of Mandke Foundation a Company registered under Section 25 of the Companies Act 1956.

KJMC Global Market (India) Ltd. .. **Petitioners.**

Shri S.Purohit i/b Bhaishankar Kanga & Girdharlal, advocates for the petitioners.
Shri Girish Kulkarni with Ms. S.A.Joshi for the respondent company.

CORAM: S.U.KAMDAR, J.

DATE : December 3, 2004

P.C. :-

. The present petition is filed under section 434 of the Companies Act, 1956 for winding up of the company. Petitioners are carrying on business of consultation and

offering their services for obtaining financial assistance from financial institutions. Respondent company is registered under section 25 of the Companies Act and is incorporated to establish super speciality hospital and medical research centre for cardiac diseases.

2. For the purpose of establishing hospital respondent company was desirous of availing of the loan facilities from IDBI. Accordingly company appointed the petitioners to render their services for obtaining the loan of Rs.40 Crores. On 9th December, 1998, the respondent company addressed letter to the Industrial Development Bank of India interalia informing that the petitioner is appointed as Financial Adviser having sole responsibility of interacting with the IDBI on their behalf in matters relating to processing of their application for such financial assistance. It is admitted position before me that loan to the tune of Rs.40 crores has been disbursed by the IDBI. In fact by a letter dated 27th January, 2000, respondent company acknowledged the services rendered by the petitioner and informed the petitioner that all the concessions which were requested by them to the IDBI pertaining to the disbursement of the said loan has been granted by the Chairman of the IDBI.

3. It is the case of the petitioner that initially they had offered their services for the remuneration @ 1.25% of the loan amount disbursed towards their service charges and professional fees. However, subsequently according to the petitioner, the said amount was reduced in all inclusive of Rs.40 Lakhs. The said amount of Rs.40 Lakhs included even out of pocket expenses. The Petitioner raised bill on 6th June, 2000 for a total sum of Rs.65 Lakhs. The said bill was raised on the basis of professional fees of Rs.40 Lakhs and out of pocket expenses of Rs.25 Lakhs separately charged. However on 18th October, 2000, the petitioner admitted and stated that the petitioners had agreed to accept the sum of Rs.40 Lakhs as professional fees for all efforts put in by them in respect of the disbursement of the loan for hospital project and that said amount of Rs. 40 Lakhs would include out of pocket expenses also. Thus in effect the petitioner accepted that total amount payable to them is Rs.40 Lakhs all inclusive and not 65 Lakhs. It is also admitted position that out of the said amount a sum of Rs.10/- Lakhs has been paid as and by way of part payment on 17th October, 2000 by respondent company to the petitioner. On 31st October, 2001, the respondent addressed a letter to the petitioner interalia therein acknowledging liability to make

payment towards professional charges to the petitioner herein. However, the respondent requested for time on the ground that there is severe cash crunch since project is undergoing and construction is not completed. It is also admitted in the said letter dated 31st October, 2001 that the payment of the balance amount has been delayed. The said letter also acknowledges the payment of sum of Rs.10 Lakhs by the respondent company to the petitioner on 17th October, 2000. However, inspite of the repeated request, the balance amount was not forthcoming from the respondent company. Petitioner therefore gave statutory notice on 5th January, 2000 interalia claiming therein their professional fees @ 2% of the total amount of the loan disbursed as and by way of professional fees. Petitioner thereafter gave another notice on 23rd January, 2002 in which the petitioner has claimed Rs.30 Lakhs as balance amount professional fees. However, the respondent has replied to the said notice by stating that the amount claimed is totally false. It has also been stated in paragraph-11 that 2% amount was never agreed by and between the parties. What is significant is that it has been admitted that part payment of Rs.10 Lakhs has been made towards professional fees. The said amount itself shows that there is balance payment to be made towards professional fees.

4. Petitioner thereafter filed petition in this court i.e. Company Petition No.874 of 2002. By an order dated 27th February, 2003 the said petition was allowed to be withdrawn with liberty to file fresh petition. Consequently thereupon, the petitioner issued fresh demand notice on 28th March, 2003 in which balance claim is made of Rs.30 Lakhs on the basis of the lumpsum agreement of Rs.40 Lakhs. The respondent company has replied to the said notice on 21st April, 2003 interalia denying any liability to pay.

5. The learned counsel for the respondent company has placed before me three contentions for my consideration. Firstly he has contended that there is no agreement to pay a sum of Rs.40 Lakhs. He has also pointed out that there is inconsistent demand. It has been further contended that in view of the fact that petitioner has not been able to point out a crystalised claim, the present petition should be dismissed. In so far as this argument is concerned, I find that there is no substance therein. It is true that different amounts are set out in the various correspondence. However what is material to see is that on 6th June, 2000 as per agreement, bill was sent for Rs.65 Lakhs being Rs.40 Lakhs as professional fees and Rs.25 Lakhs as out of pocket

expenses. By subsequent letter of 18th October, 2000, petitioner agreed for Rs.40 Lakhs in lumpsum. From 18th October, 2000 till reply to the statutory notice, I do not find any where any dispute is raised by the respondent company towards the amount of Rs.40 Lakhs or balance claim payable to the extent of Rs.30 Lakhs. Not only that the respondent company has made part-payment of Rs.10 Lakhs. Even it is admitted by the respondent company that the said payment is made towards the professional charges. In fact by their letter dated 31st October, 2001, there is an admission to pay the liability of the balance amount and time is sought because of the financial cash crunch. It is therefore obvious that the defence now raised that there is no agreement to pay Rs.40 Lakhs is bogus and afterthought. Hence I reject the said contention.

6. The learned counsel for the respondent company has thereafter raised the contention that in fact the said payment of Rs.10 Lakhs was not part payment but full and final settlement towards the payment of professional fees. Suffice to state that the said contention is contrary to the letter dated 23rd January, 2002 in which they have admitted that the said payment is on account and not for full and final settlement. Payment of Rs.10 Lakhs is made on 17th October, 2000 and as far as back

as on 23rd January, 2002 it has been admitted that the said claim is only on account payment. It is therefore not possible to accept the contentions of the learned counsel for the respondent that they finally settled all the claims of the petitioner. The last contention in the affidavit filed by Mrs. Neetu Mandke is that the services rendered by the petitioner was not satisfactory. The contention is based on the argument that the application for loan was made of Rs.129/- Crores whereas actual disbursement was of only Rs.40 Crores. This contention requires to be stated only for rejection. Firstly, disbursement of loan is done by the Bank and financial Institutions on the basis of the record of the company and the financial viability of the project as well as credit worthiness of the person availing of such loan facilities. It has nothing to do with the services rendered by the petitioner herein. Secondly letter dated 27th January, 2000 speaks otherway round. When they have accepted that due to the efforts of the petitioner company they can get all the concessions and benefits in the loan disbursement from the IDBI it does not permit them to challenge the quality of services rendered by the petitioner.

7. In the aforesaid circumstances, I do not find any substance in the contentions raised by the respondent

company. In the light of the above discussion, I pass the following order.

(i) Respondents are directed to deposit in this Court sum of Rs.30 Lakhs on or before 10th February, 2005. In case the respondents failed to deposit Rs.30 Lakhs in the court on or before 10th February, 2005, petition stands admitted.

(ii) If the said amount is deposited, petition shall stand dismissed. Petitioner will be required to file his own suit and the amount to be transferred to the credit of said suit if filed by the petitioner herein.

(iii) In the event of failure to deposit the amount as directed the petition to do stand admitted. Petition to be advertised in Free Press Journal, Janmabhumi and Govt. Gazette.

(iv) The petitioner to deposit a sum of Rs.2,000/- (Rupees two thousand only) with the Prothonotary & Senior Master, High Court, Mumbai towards publication charges.

(v) Petition stand disposed of accordingly.